

Assembly Bill No. 1725

Passed the Assembly August 19, 2004

Chief Clerk of the Assembly

Passed the Senate August 10, 2004

Secretary of the Senate

This bill was received by the Governor this _____ day of
_____, 2004, at _____ o'clock __M.

Private Secretary of the Governor

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CHAPTER _____

An act to amend Sections 7197, 8617, and 8662 of the Business and Professions Code, relating to structural pest control.

LEGISLATIVE COUNSEL'S DIGEST

AB 1725, Matthews. Structural pest control: violations.

Existing law provides for licensing and regulation of structural pest control operators and related licensees by the Structural Pest Control Board. Existing law also sets forth certain responsibilities of the Director of Pesticide Regulation and county agricultural commissioners relative to inspections and pesticide use by licensees of the board. Existing law provides for suspensions of business for up to 3 days and for administrative fines of up to \$1,000 for violations of laws governing structural pest control licensees, with fines deposited into the Education and Enforcement Account in the Structural Pest Control Education and Enforcement Fund. Existing law requires the licensee to be given notice of the proposed action, and authorizes the licensee to file an appeal that would stay the commissioner's order until 20 days after the Disciplinary Review Committee has ruled on the appeal.

This bill would instead provide for administrative fines of up to \$5,000 for any violation determined by the board or a county agricultural commissioner to be a serious violation, as defined by regulation. The bill would provide that, upon appeal, an order would be stayed until 30 days after the Disciplinary Review Committee has ruled on the appeal.

Existing law authorizes a party that is suspended or fined by a county agricultural commissioner to appeal by filing a written appeal with the Disciplinary Review Committee within 10 days of receipt of the fine or suspension order, if specified conditions are met.

This bill would instead authorize the party to file the appeal within 30 days of receipt of the fine or suspension order.

Existing law requires the committee to render its decision within 45 days of the date of appeal or within 15 days from oral argument, and provides that the fine or suspension order is null and void if these time requirements are not met.



This bill would also permit the committee to render its decision as soon as practical and would delete the provision making the order null and void if the time requirements are not met.

Existing law regulates individuals who perform home inspections, as defined, and makes various practices relating to home inspections unfair business practices.

This bill would exempt specified acts by structural pest control operators from these provisions.

The people of the State of California do enact as follows:

SECTION 1. Section 7197 of the Business and Professions Code is amended to read:

7197. (a) It is an unfair business practice for a home inspector, a company that employs the inspector, or a company that is controlled by a company that also has a financial interest in a company employing a home inspector, to do any of the following:

(1) To perform or offer to perform, for an additional fee, any repairs to a structure on which the inspector, or the inspector's company, has prepared a home inspection report in the past 12 months.

(2) Inspect for a fee any property in which the inspector, or the inspector's company, has any financial interest or any interest in the transfer of the property.

(3) To offer or deliver any compensation, inducement, or reward to the owner of the inspected property, the broker, or agent, for the referral of any business to the inspector or the inspection company.

(4) Accept an engagement to make an inspection or to prepare a report in which the employment itself or the fee payable for the inspection is contingent upon the conclusions in the report, preestablished findings, or the close of escrow.

(5) A home protection company that is affiliated with or that retains the home inspector does not violate this section if it performs repairs pursuant to claims made under the home protection contract.

(b) This section shall not affect the ability of a structural pest control operator to perform repairs pursuant to Section 8505 as a result of a structural pest control inspection.



SEC. 2. Section 8617 of the Business and Professions Code is amended to read:

8617. (a) The board or county agricultural commissioners, when acting pursuant to Section 8616.4, may suspend the right of a structural pest control licensee or registered company to work in a county for up to three working days or, for a licensee, registered company, or an unlicensed individual acting as a licensee, may levy an administrative fine up to one thousand dollars (\$1,000) or direct the licensee to attend and pass a board-approved course of instruction at a cost not to exceed the administrative fine, or both, for each violation of this chapter, or Chapter 14.5, or any regulations adopted pursuant to these chapters, or Chapter 2 (commencing with Section 12751), Chapter 3 (commencing with Section 14001), Chapter 3.5 (commencing with Section 14101), or Chapter 7 (commencing with Section 15201) of Division 7 of the Food and Agricultural Code, or any regulations adopted pursuant to those chapters, relating to pesticides. However, any violation determined by the board or the commissioner to be a serious violation as defined in Section 1922 of Title 16 of the California Code of Regulations shall be subject to a fine of not more than five thousand dollars (\$5,000) for each violation. Fines collected shall be paid to the Education and Enforcement Account in the Structural Pest Control Education and Enforcement Fund. Suspension may include all or part of the registered company's business within the county based on the nature of the violation, but shall, whenever possible, be restricted to that portion of a registered company's business in a county that was in violation.

(b) A licensee who passes a course pursuant to this section shall not be awarded continuing education credit for that course.

(c) Before a suspension action is taken, a fine levied, or a licensee is required to attend and pass a board-approved course of instruction, the person charged with the violation shall be provided a written notice of the proposed action, including the nature of the violation, the amount of the proposed fine or suspension, or the requirement to attend and pass a board-approved course of instruction. The notice of proposed action shall inform the person charged with the violation that if he or she desires a hearing before the commissioner issuing the proposed action to contest the finding of a violation, that hearing shall be requested by written



notice to the commissioner within 20 days of the date of receipt of the written notice of proposed action.

A notice of the proposed action that is sent by certified mail to the last known address of the person charged shall be considered received even if delivery is refused or the notice is not accepted at that address.

If a hearing is requested, notice of the time and place of the hearing shall be given at least 10 days before the date set for the hearing. At the hearing, the person shall be given an opportunity to review the commissioner's evidence and a right to present evidence on his or her own behalf. If a hearing is not requested within the prescribed time, the commissioner may take the action proposed without a hearing.

(d) If the person upon whom the commissioner imposed a fine or suspension or required attendance at a board-approved course of instruction requested and appeared at a hearing before the commissioner, the person may appeal the commissioner's decision to the Disciplinary Review Committee and shall be subject to the procedures in Section 8662.

(e) If a suspension or fine is ordered, it may not take effect until 20 days after the date of the commissioner's decision if no appeal is filed. If an appeal pursuant to Section 8662 is filed, the commissioner's order shall be stayed until 30 days after the Disciplinary Review Committee has ruled on the appeal.

(f) Failure of a licensee or registered company to pay a fine within 30 days of the date of assessment or to comply with the order of suspension, unless the citation is being appealed, may result in disciplinary action being taken by the board.

Where a citation containing a fine is issued to a licensee and it is not contested or the time to appeal the citation has expired and the fine is not paid, the full amount of the assessed fine shall be added to the fee for renewal of that license. A license shall not be renewed without payment of the renewal fee and fine.

Where a citation containing a fine is issued to a registered company and it is not contested or the time to appeal the citation has expired and the fine is not paid, the board shall not sell to the registered company any inspection stamps, notice of completion stamps, or pesticide use stamps until the assessed fine has been paid.



Where a citation containing the requirement that a licensee attend and pass a board-approved course of instruction is not contested or the time to appeal the citation has expired and the licensee has not attended and passed the required board-approved course of instruction, the licensee's license shall not be renewed without proof of attendance and passage of the required board-approved course of instruction.

(g) Once final action pursuant to this section is taken, no other administrative or civil action may be taken by any state governmental agency for the same violation. However, action taken pursuant to this section may be used by the board as evidence of prior discipline, and multiple local actions may be the basis for statewide disciplinary action by the board pursuant to Section 8620. A certified copy of the order of suspension or fine issued pursuant to this section or Section 8662 shall constitute conclusive evidence of the occurrence of the violation.

(h) Where the board is the party issuing the notice of proposed action to suspend or impose a fine pursuant to subdivision (a) of this section, "commissioner" as used in subdivisions (c), (d), and (e) includes the board's registrar.

SEC. 3. Section 8662 of the Business and Professions Code is amended to read:

8662. (a) Whenever the right of a structural pest control licensee or registered company to make pesticide applications is to be suspended or the licensee, registered company, or unlicensed individual is to be fined pursuant to Section 8617, and if the person upon whom the commissioner imposed a fine or suspension requested and appeared at a hearing before the commissioner in accordance with Section 8617, the party to be suspended or fined may appeal to the Disciplinary Review Committee by filing a written appeal with the committee within 30 days of receipt of the fine or suspension order.

(b) The following procedures shall apply to the appeal:

(1) The appeal shall be in writing and signed by the appellant or his or her or its authorized agent, state the grounds for the appeal, and include a copy of the commissioner's decision. The appellant shall file a copy of the appeal with the commissioner at the same time it is filed with the committee.

(2) Any party may, at the time of filing the appeal or within 10 days thereafter, or at a later time prescribed by the committee or



its designee, present the record of the hearing, including written evidence that was submitted at the hearing and written argument to the committee stating the grounds for affirming, modifying, or reversing the commissioner's decision.

(3) The committee or its designee may grant oral argument upon application made at the time written arguments are filed. If an application to present an oral argument is granted, written notice of the time and place for the oral argument shall be given each party at least 10 days before the date set therefor. The times may be altered by mutual agreement of the appellant, the commissioner, and the committee.

(4) At any time written evidence is submitted to the committee, a copy shall be immediately provided to the other party.

(5) The committee shall decide the appeal on the record of the hearing, including the written evidence and the written argument described in paragraph (2) that the committee may have received. If the committee finds substantial evidence in the record to support the commissioner's decision, the committee shall affirm the decision.

(6) The committee shall render its written decision within 45 days of the date of appeal or within 15 days from the date of oral arguments, or as soon thereafter as practical.

(7) On an appeal pursuant to this section, the committee may sustain, modify by reducing the time of suspension or the amount of the fine levied, or reverse the decision. A copy of the committee's decision shall be delivered or mailed to each party.

(8) Review of the decision of the committee may be sought by the licensee, registered company, or unlicensed individual pursuant to Section 1094.5 of the Code of Civil Procedure.

Approved _____, 2004

Governor

